

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
*Southern Division***

SEAN HOPKINS

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v.

Case No.: PWG-14-685

THE UNITED STATES OF AMERICA

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THE UNITED STATES OF AMERICA

*

*

v.

Case No.: PWG-99-cr-224

SEAN HOPKINS

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MEMORANDUM AND ORDER

In his most recent attempts to vacate the life sentence he received in 2001, Sean Hopkins has filed two motions under 28 U.S.C. § 2255 to vacate or correct what he perceives to be an illegal sentence.¹ Def.’s Mar. 7, 2014 Mot., ECF No. 165; Def.’s Jan. 27, 2015 Mot., ECF No. 168. When the Government failed to respond, I ordered it to show cause why I should not accept Defendant’s representations as correct and grant his motions. ECF No. 169. The Government filed a response, opposing the motions and explaining that, “[b]ecause of the absence of any active attorneys on the notice list for this long-closed case, the U.S. Attorney’s Office for the

¹ Although Mr. Hopkins does not identify his motions as made pursuant to § 2255, “[w]here, as here, a federal inmate seeks to challenge his sentence, the appropriate legal proceeding to bring his claims is in a Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255,” which is “the presumptive means for a federal inmate to collaterally attack his sentence.” *See Alston v. United States*, No. RDB-12-2193, 2012 WL 3745795, at *1 (D. Md. Aug. 28, 2012) (citing *Davis v. United States*, 417 U.S. 333, 343 (1974)).

District of Maryland did not receive notice of Hopkins's most recent motions or the Court's March 27, 2014 order directing the government to submit a response." Gov't Resp. 5 n.2, ECF No. 171. I directed Defendant to file his reply, if any, by June 5, 2015. ECF Nos. 172, 174. In lieu of responding, Defendant filed a Motion Requesting Transfer to the United States Court of Appeals for the Fourth Circuit as an Application to Authorize the Filing of a Second or Successive 2255. ECF No. 175. The Government filed a response, ECF No. 176, indicating that it does not oppose Defendant's motion.

The Government argues correctly that "[a] petitioner may not file in a district court a second or successive motion to vacate, set aside, or correct his sentence without first obtaining an order from the appropriate appellate court granting permission to file such a motion." Gov't Resp. 5 (citing 28 U.S.C. § 2255(h) ("[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals"); 28 U.S.C. § 2244(b)(3)(A) ("Before a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."); *In re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1997) ("Under AEDPA, an individual may not file a second or successive . . . § 2255 motion to vacate a sentence without first receiving permission to do so from the appropriate court of appeals.")) . Defendant previously filed three § 2255 motions, ECF Nos. 105, 112, 133, as well as a Motion to Reduce Sentence under 18 U.S.C. § 3582(c)(2), ECF No. 140, without success. Indeed, Defendant acknowledges that he has filed § 2255 motions previously. *See* Def.'s Jan. 27, 2015 Mot. 2 ("Hopkins filed Direct Appeal, Supreme Court, § 2255, Rule 60(b), second Successive, and § 2241."). And, in requesting a "transfer" of this case to the Fourth Circuit "as an application to authorize the filing of a second or successive 2255 motion pursuant to 28 U.S.C.

§ 2244(b)(3)(A)," Defendant appears to concede that he must have authorization from the Fourth Circuit before proceeding in this Court. *See* Def.'s Mot. to Transfer 1. Significantly, "[i]n the absence of pre-filing authorization, the district court lacks jurisdiction to consider an application containing abusive or repetitive claims." *United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003). Because Defendant has filed previous § 2255 motions and has not received permission from the Fourth Circuit for this motion, this Court lacks jurisdiction. *See id.*

The district court does not transfer cases to the Fourth Circuit, but the appellate court has set forth instructions for the filing of a motion to obtain the aforementioned authorization order. The procedural requirements and deadlines for filing the motion are extensive. Therefore, I am attaching a packet of instructions promulgated by the Fourth Circuit, which addresses the comprehensive procedure to be followed should Petitioner wish to seek authorization to file a successive petition with the appellate court. It is to be emphasized that Petitioner must file the pleading with the Fourth Circuit Court of Appeals and obtain authorization to file a successive petition before this Court may examine the claims.

Consequently, I will dismiss the Motions without prejudice for lack of jurisdiction and decline to issue a certificate of appealability because Mr. Hopkins has not made a "substantial showing of the denial of a constitutional right."²

² When a district court dismisses a § 2255 motion solely on procedural grounds, "[a] certificate of appealability will not issue absent 'a substantial showing of the denial of a constitutional right.'" *United States v. Hardy*, 227 F. App'x 272, 273 (4th Cir. 2007) (quoting 28 U.S.C. § 2253(c)(2)). To make this showing, Defendant must "demonstrate[e] that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong *and that any dispositive procedural ruling by the district court is likewise debatable.*" *Id.* (emphasis added); *see Slack v. Daniel*, 529 U.S. 473, 484 (2000). Denial of a certificate of appealability in the district court does not preclude Defendant from requesting a certificate of appealability from the appellate court.

ORDER

Accordingly, it is, this 23rd day of June, 2015, hereby ORDERED that

1. Defendant's Motions, ECF Nos. 165, 168, and 175, ARE DISMISSED for lack of jurisdiction;
2. A Certificate of Appealability WILL NOT ISSUE;
3. The Clerk SHALL PROVIDE a copy of this Order and a copy of the instructions and form packet for filing a motion under 28 U.S.C. § 2244 (authorization of District Court to consider second or successive application for relief) to Petitioner;
4. The Clerk SHALL CLOSE Civil Action No. PWG-14-685.

/S/

Paul W. Grimm
United States District Judge

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